

It's troubling to me that the Arizona Association of Superior Court Clerks (AASCC) and the Committee on Superior Court (COSC) oppose a petition for better oversight of the constitutionally and statutory mandated 60-day Rule for Superior Court judges.

Well, I said nobody wants to be a tattletale. And apparently, those who have something to hide don't want to be tattled on. But if judges are obeying the law, why the concern?¹

In fact, if the court is really interested in Integrity, then it should welcome the additional oversight, which, like an acid test for gold, proves one's mettle.

Case in point: In the three year period for which I inspected the Clerk's Quarterly Report of Submitted Matters for Yavapai County, there was only one judge who had violated the 60-day Rule.² The rest were clean. And that's good to know. But it brings me to my first argument.

Both the AASCC and the COSC complain that making the Clerks report every 60-day violation would place an undue "burden" on them. The data from Yavapai county says otherwise. (Unless there's something the clerks know about violations that they're not reporting.) And while I didn't do an exhaustive search of the other counties when I inspected the record, a cursory survey showed only an occasional 60-day Rule violation every now and then. That can hardly burden the Clerks.

Even the AASCC agrees! In its comment, the AASCC chides me for "citing a single case . . . painting a picture that hundreds of judicial officers and thousands of court employees . . . are aware of intentional wrongdoing." So then, by its own admission, the AASCC says hardly any judges are violating the Rule, rendering its, and the COSC's argument about "undue burden" baseless.

Next, the AASCC sets up a series of strawmen. It does not matter whether a judge intentionally or unintentionally violates the 60-day Rule any more than it matters to a police officer (or a judge) if you were intentionally or unintentionally speeding. You violate the law, you are guilty.³

The next strawman is the claim "Petitioner expects that any judge who has not ruled on a matter within sixty days of submission will be denied a paycheck and sanctioned."

I never said that. So we can disregard that argument since it is specious. Actually, the AACSS knows better. As Superior court judges know, as things are now, given the

¹ "For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you." Romans 13:3

² That were reported, I cautiously add. As stated in my previous comment, I have credible reports that the Clerk missed a significant number of judge Hinson's violations.

³ Unfortunately a staffer at the Commission on Judicial Conduct laughed at this analogy, saying, "That's hardly the same thing" She's right. One is a constitutional requirement. The other is a mere civil infraction. Unfortunately, it costs more to violate the lesser than the greater.

paper shuffle involved, a judge signs his monthly certification, that he is theoretically eligible to receive his paycheck, about two weeks ahead of when the check is cut. (But wouldn't it be great if we moved into the electronic age and the check was cut only if the judge had completed his obligations? Works in the private sector.)

A third strawman as the AASCC tries to make itself the arbiter of judicial misconduct and by misrepresenting common sense. The fact is, when a judge violates the 60-day Rule he is "guilty" of breaking the law. More so if he lies about it to get his paycheck. How the Commission works and whether it should/should not consider intent is not germane to this discussion. Nor is it the jurisdiction of the Clerks. Much like a police officer, their duty is to report misconduct and let the Commission decide the matter. The AASCC makes red herring argument that Clerks would be making ethics decisions about which judge to report and which not. That is not the Clerks' job. The Clerks' job is to report all violations. It's quite easy, actually.

The COSC suggests a Rule change guaranteeing strict oversight is unnecessary because it would be "duplicative of safeguards already in statute." Really? What safeguards would those be?

The Clerks don't want to act. They say so here. In a previous comment, I showed that attorneys don't want to act. And the State Bar doesn't expect them to and won't sanction them for not acting. I demonstrated that one Presiding judge didn't act. From that and another sample Presiding Judge who didn't act, that seems to be the norm.

While it doesn't seem to happen often (that we know of), the reality is, high profile cases involving gross violations of the 60-day Rule and lying about it to the Court are not discovered by the system. They're discovered by outsiders. In former judge McDougall's case in 2000, it was a NewTimes reporter's investigation that caused the judge to resign. In the recent case of former judge Hinson, it was a concerned citizen. There are no real safeguards and the system isn't working. We're merely fortunate that most of the apples in the barrel are good ones. But there's virtually nothing to spot the bad ones until they're really rotten. Hence, the need for this petition.

Lastly, in this day and age of computers, none of this should be a burden on anyone. While I know that "No job is impossible for the man who doesn't have to do it himself," really, how hard can it be to have the Case Management Software start a 60 day countdown timer when a matter starts and flash a big warning sign on a computer screen on pay day? The Supreme Court has a excellent and capable IT Department, as demonstrated when they restored this forum in its entirety within days of a hard crash. How hard can it be to have the CMS send automatic emails to the Finance Office, alerting it when to suspend a paycheck because a judge has not complied with the law? And to the Commission, reporting a violation?

I had originally offered, as a practical solution in light of politics, that the court should direct the AOC Finance Office staff to report 60-day violations. While I still maintain the court's staff is duty bound to report violations when it seems them, I repent of my idea to minimize the duty of the Clerks. I had offered that as a political expediency. But upon reflection, history demonstrates

that decisions made for political expediency are usually wrong.⁴ Superior court clerks are elected public officials. They make is sound as if their duty to the public and their duty to the court is mutually exclusive. It's not. We want the best clerks we can get, and that would be a clerk diligent in the oversight of judges, per Rule 61(e).

And in all this, I forgot the most important person affected by the oversight of judges. The public. Especially since we vote for judges in this State.

Quoting then Maricopa County Chief Deputy Attorney Philip MacDonnell (from what I presume was an equally contentious discussion in the forum about publicizing complaints of judicial misconduct), "More sunshine on how judges are doing will ensure that they're more likely to act properly. . . We wanted complete transparency and figured the public could figure it out."

I urge the Court to adopt this petition.

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⁴ Pilate and Jesus in ancient times. Dred Scott in newer.